

GERMANY'S CLAIMS
UPON
GERMAN-AMERICANS
IN
GERMANY
EDWARD W. S. TINGLE, A.B.



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Germany's claims upon German-Americans i



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GERMANY'S CLAIMS UPON GERMAN-AMERICANS IN GERMANY

A DISCUSSION OF GERMAN MILITARY AND OTHER LAWS
WHICH MAY AFFECT GERMAN-AMERICANS TEMPORA-
RILY IN GERMANY TOGETHER WITH SOME COM-
MENT UPON EXISTING TREATIES

BY

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INTRODUCTION.

One of the most frequent and perplexing questions arising in United States Consulates—situated in Germany—is the determination of the immunities which German-Americans, that is to say, born Germans who have become citizens of the United States, secure by virtue of their citizenship as against the application to them of German military and other law.

The different laws bearing upon individual cases not being always at hand, it is not easy at times to give inquiring German-Americans, temporarily in Germany or who may intend visiting their native land, sufficiently reliable information. This little volume is written to overcome the difficulty by rendering it possible for all United States Consuls, and such other persons as may be interested, to have in hand a book, not too technical and not too detailed, which will give them accurate information as to just how far German military law in all possible cases may be made to apply

to former German subjects who have forsaken their allegiance to any State of Germany to assume citizenship of the United States.

The orders, laws and treaties quoted have been drawn from official sources and where especially important, and that no doubt may exist as to the interpretation of a word or phrase, are quoted in the original as well as by translation.

That fellow members of the Consular Corps may find the volume useful is the hope of

THE AUTHOR.

United States Consulate,

Brunswick, Germany, May 30th, 1896.

NOTE.—This volume was offered by the writer to the State Department for publication by it for the use of the Consular Service and was formally accepted by Secretary Sherman for that purpose. Though in use in the Department in manuscript, its publication was delayed for various reasons and the writer given the option of offering it to a publishing house. Advantage of that fact has been taken to revise the text and bring it up to date.

Philadelphia, January, 1903.

ACKNOWLEDGMENT.

Grateful acknowledgment is due from the writer to his former preceptor, Prof. von Bar, pro-rector and professor of International Law at the University of Göttingen, Germany, who kindly reviewed this work in manuscript from the standpoint of international law and approved it; to Herr Justizrath Ritter, of the legal department of the German Army, whose extensive practical experience as a military judge with the questions discussed made his approval, given after thorough examination, of exceptional value and to that valuable consular officer of the United States, Consul-General Mason, of Berlin, Germany, whose profound experience gained by twenty years of continuous consular service lends a peculiar worth to the approval which the work, also submitted to him in manuscript, received from him.

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Consul's First Duty.

1. The first duty of a United States Consul or other representative abroad of the United States when his advice or protection is demanded by anyone on the score of citizenship is to satisfy himself that the applicant is really a citizen of the United States.

German Americans in United States.

2. Since the German-Americans in the United States exceed five millions in number and since many of them yearly visit their native country, it happens that Consuls and the Embassy of the United States in Germany have far more occasion to give advice and protection to German-Americans than to American citizens of any other na-

tivity. It is for this reason that the writer will confine himself to a discussion of the rights, privileges and duties of German-Americans as affected by the German law.

How American Citizenship is Secured.

3. Let it first be considered how a person of German birth may become a citizen of the United States; when he is so regarded by his mother country; and what evidence he must produce to establish the fact of such citizenship, when required. The born German secures this citizenship in two ways:

First. Having emigrated to the United States and being twenty-one years of age or more, he declares as soon as he likes, before a court of record, his intention to become an American citizen and to renounce all allegiance to the German Emperor. He then receives a certified document stating this fact. This document forms the so-called "First papers." It confers, however, only a semi-recognition of him as a possible citizen. It does not put him on the same footing as the actual citizen and does not empower him to demand the protection of United States representatives in Germany, for in the eyes of that country he is still a German subject. To such a one, however, in view of his eventual citizenship the good

offices of the United States representatives may be extended so far as the obligation of courtesy may permit. He first becomes a citizen, entitled to all the rights of other American citizens—with the exceptions hereafter to be noted—when he has continued to reside in the United States five years, and at least two years after the issuance of his first papers (declaration of intention) receives after application to a court of record a document popularly called "Second papers" or "Final papers" setting forth the fact of naturalization and admitting him to full citizenship. Should he have served in the United States Army, however, and have been honorably discharged, he may become a naturalized citizen at once upon application, being required to prove but one year's residence, or should he have served uninterruptedly on an American war ship three years, he may enjoy the same privileges, provided his declaration of intention has been made three years prior to his application for admission as a citizen. He is then entitled to the same consideration from United States representatives abroad as the native-born citizen.

Service in Navy.

4. An alien over 21 years of age who has served five years in the navy or one enlistment of

three years in the marine corps may also be admitted to citizenship upon proving honorable discharge without making previous declaration of intention. But section 16 of the Navy Personnel Act approved March 3, 1899, now makes the term of enlistment of all enlisted men in the navy four years and the Naval Appropriation Act of 1901, that of enlisted men in the marine corps also four years.

Under date of November 25, 1902, the Judge Advocate General of the navy decided that the Act of July 26, 1894 (28 Stat. L. 124) made necessary a service of five years in either navy or marine corps and that the change of the term of enlistment by the Navy Personnel Act could not modify this, stating however, the question is one for determination by the Courts.

The second way in which a born German may secure citizenship is that while yet under twenty-one years of age he accompanies his father to the United States and is still under twenty-one years of age when his father secures full citizenship. In this case, the citizenship of the father clothes also the children without further formality. It may be added, that the children of naturalized German-American citizens born while the parents are temporarily residing abroad, even in Germany, are citizens of the United States. Born Germans

under twenty-one going to America without their parents, or the parents of whom may have died during the children's minority without obtaining citizenship can obtain citizenship only through application to a court of record and the specific renouncing of all allegiance to any foreign power or potentate, but the child of one who has made his declaration of intention and who dies before securing naturalization is considered a citizen upon taking the oaths prescribed by law. The son of Germans residing in the United States, the parents never having acquired citizenship, must secure his citizenship by applying to the Court in the manner indicated above. It should be understood that what applies to a child accompanying the father, applies also if, the father being dead, the child emigrates with the mother.

Proofs of Citizenship.

5. The German-American citizen, accordingly, being temporarily in Germany and requiring advice or protection from the representatives of his adopted country must demonstrate to the representative that he has the right, conferred upon him by citizenship, to make such a demand. The obvious and simplest method for identification is, of course, the production of a passport, issued from the Department of State. It often happens,

however, that German-Americans, as well as other citizens, very ill-advisedly, go abroad without a passport. The proper procedure then is to apply to the nearest Consul or Minister. The former is authorized to forward an application for a passport to the Minister, but may not issue one himself. In this case the applicant must exhibit either his naturalization papers, or a certified copy thereof. In case the applicant is the German-born son of a father who secured citizenship in America during his son's minority, then should he have no passport, he must exhibit his father's original papers. This once done and the identity of the applicant established, his right to demand active intervention in his behalf in all proper ways by his adopted country's representative may not be called into question and the latter must exert himself in the applicant's interest exactly as he would were the applicant a native-born citizen of the United States.

CHAPTER II.

WHEN GERMANY RECOGNIZES AMERICAN CITIZENSHIP AND HOW FAR.

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Germany's Recognition of Citizenship.

6. Germany recognizes American citizenship and the immunities it confers on her former subjects with certain limitations. The treaty between the United States and the States of the North German Union concluded February 22, 1868, and proclaimed May 27, 1868 (Pp. 790-1—Treaties and Conventions United States 1889) declares "Citizens of the North German Confederation who become naturalized citizens of the United States of America and shall have resided uninterruptedly in the United States five years shall be held by the North German Confederation to be American citizens and shall be treated as such."

"A naturalized citizen of the one party on re-

turn to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration saving always the limitations established by the laws of his original country."

"If a German naturalized in America renews his residence in North Germany without the intent to return to America he shall be held to have renounced his naturalization in the United States."

Position of Baden.

7. A treaty was concluded with Baden on July 19, 1868, to the same effect, with certain provisions relating to military service which will be considered hereafter and with the following provision regarding the re-acquirement of Badener citizenship: "The emigrant from the one State who is to be held as a citizen of the other State shall not on his return to his original country be constrained to resume his former citizenship; yet if he shall of his own accord re-acquire it and renounce the citizenship, acquired by naturalization, such a renunciation is allowed and no fixed period of residence shall be required for the recognition of his recovery of citizenship in his original country."

Position of Bavaria.

8. The treaty on the subject of naturalization concluded with Bavaria on May 26, 1868, is similar to that concluded with the North German Confederation with the exception that a Bavarian naturalized in the United States and returning to Bavaria, while held to have renounced his American citizenship through a residence in Bavaria of more than two years, does not *eo ipso* re-acquire Bavarian citizenship but only after making due application as in the case of any other alien and at the pleasure of the King of Bavaria.

Position of Hesse.

9. The treaty with the Grand Duchy of Hesse concluded August 1, 1868, is the same in its provisions as that with the North German Confederation as is also that concluded July 27, 1868, with Württemberg.

These various treaties have, of course, been incorporated into the law governing the relations between the German Empire and the United States, and have the same force, since the founding of the German Empire as they had before, except that they are not held to apply to Alsace-Lorraine.

That no possible doubt of their meaning may exist it may be well to explain this expression

occurring in all the treaties: "If a German naturalized in America renews his residence in North Germany (or Bavaria, Baden or Württemberg) without the intent to return to America he shall be held to have renounced his naturalization in the United States."

It has been held by the different German States that a residence of more than two years without intent to return to America is sufficient to bring about this loss of American citizenship. Obvious exceptions to this rule are the cases of American students at German Universities and business men required temporarily by the demands of their business to remain in Germany longer than the prescribed time. Exceptions are usually easy of recognition. It deserves to be mentioned also that the phrase "shall have acquired naturalization and have resided uninterruptedly five years in the United States" has been officially interpreted to mean that the five years' residence required shall not necessarily be reckoned after the receipt of the naturalization papers but from the beginning of the entire period of residence in America, and furthermore that "uninterrupted residence" does not preclude business or pleasure trips of short duration beyond the boundaries of the United States, but refers to continued legal residence. It must also be remarked that each of

the treaties specially provides that any emigrant guilty of a crime in the mother country before acquirement of citizenship in the United States shall not be preserved from punishment for that crime, should he return to the mother country, by virtue of his new citizenship.

Germany's Interpretation of Offenses.

10. This provision leads to the consideration of what Germany regards as offenses against her military law; offenses committed prior to acquiring other citizenship and therefore punishable and which may be punished by her either through an opportunity, given by the ill-advised return of the guilty person to Germany or through the successful demand for his extradition. Since offenses against the military law of Germany are of most frequent occurrence and since such offenses very often take place through ignorance or inadvertence on the part of the emigrant, it is well to consider the German regulations on this subject separately.

CHAPTER III.

GERMAN MILITARY REQUIREMENTS. WHEN A
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Other classes of emigration, 12.

Authority on non-liable emigration, 13.

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Emigration Without Liability.

11. There are two instances where a German subject may emigrate to the United States and be free from all fear of disturbance upon his return because of unfulfilled military duty. The first is when he emigrates to the United States before reaching the age of seventeen years and becomes a citizen there. This rule holds good whether he has accompanied parents abroad and the latter becoming naturalized, he also thereby acquires

citizenship or whether he goes alone or with a guardian and acquires citizenship by naturalization on his own account. At the age of seventeen all German men become liable to military duty. At this age they are entered on the rolls as so liable and may not emigrate without a special permission from the military authorities. It follows that the youth under seventeen who emigrates to America and acquires citizenship has nothing to fear upon a return to Germany and cannot justly be called to account by the German authorities for neglect of military duty. On the other hand the youth of seventeen or over who has emigrated with permission is not liable unless, before he becomes a citizen, the German Government should publish a summons to all Germans abroad, and who are abroad with or without permission, to return for service under the colors. In this case should he not have become a citizen and should he disregard the summons he is liable to the German law upon his return to Germany. Should he have emigrated, however, with or without permission and should he have acquired citizenship before such a summons is published, then, upon his return to Germany having disregarded the order he is not liable to any punishment.

The second instance is where the emigrant has not only completed the period of his military ser-

vise but has also reached the age of 31, over which age no German, having completed the service required of him can be drawn into service in time of peace.

Other Classes of Emigration.

12. It very frequently occurs, however, that Germans emigrate who do not belong to either of the above classes. Often they have been notified that they will be drawn into service on a certain date and before that time arrives, they emigrate. More often still, having served as one year volunteers (*Einjährig Freiwilligen*) or as common soldiers (*Gemeinen*) for a full term of enlistment, formerly two now three years, and having been transferred to the reserves or to the National Guard (*Landwehr*) they emigrate without permission and acquire citizenship in the United States. It is therefore interesting to note the instances in which the German law expressly declares that a German having acquired citizenship in the United States is not liable for neglect of military duty on returning to Germany, reserving for a separate chapter those instances in which the law clearly points out liability.

It should be mentioned in this connection that in accordance with the treaty with the North German Confederation and other German States

Germany has a perfect right to punish German-Americans guilty of infraction of German military law before their acquirement of citizenship and to decide in what those infractions consist. However, military laws or regulations promulgated after the emigration of the German and in force during the acquirement of citizenship cannot be made retroactive in their character. The clause of the treaty concluded February 22, 1868, says: "A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration." The provision covers both civil and military offenses, and distinctly indicates that the emigrant shall not be held liable for an offense, technically committed after emigration. It therefore follows that having emigrated without permission, even though being in the Reserves or National Guard and in process of acquiring or having already acquired citizenship should a summons be published for all Germans to return to their native land, the German-American who disregards it by virtue of having become an American citizen or who becomes one later cannot justly be held accountable upon returning to Germany on a visit. In practice, however, he is often proceeded against.

Should he be a member of the Reserves or National Guard and disregard the summons while not yet a citizen then he is guilty of desertion, though not guilty through the simple fact of emigrating without permission when not serving, and on returning to Germany may be punished for desertion unless he has subsequently become a citizen. A member of the Reserves abroad in a good position, receiving a command to return and serve, can avoid obeying by getting a certificate from the German Consul that he has a good position, and therefore cannot obey without suffering material damage (*Reichsmilitärgesetz-buch* p. 963). This provision is of interest to many Germans who emigrated to the United States previous to the War of 1870-1. Baden and Bavaria have, however, in their treaty with the United States distinct provisions as to the liability attendant upon infractions of the military law. These will be considered in the next chapter.

Authority on Non-Liable Emigration.

13. To return therefore to the instances in which Germany distinctly recognizes non-liability:

In Vol. I, Page 43, "Proceedings of the North German Bund" appears the following:

"es kann . . . ein Deutscher welcher sich

5 Jahre in Amerika aufgehalten und dort das Bürgerrecht erworben hat, im Falle seiner Rückkehr nach Deutschland wegen unerlaubter Auswanderung (Par. 140 des R. St. G. B.) weder zur Untersuchung noch zur Strafe herangezogen werden," or in English: "No German who has remained five years in America and has secured citizenship there, can in case of his return to Germany be subjected to examination or fine because of unallowed emigration (Par. 140 German Penal Code). It follows, therefore, that when one has not fulfilled his military duty but is not guilty of desertion (desertion being defined in the next chapter) he is by German law not liable on his return to Germany after having acquired United States citizenship.

Cases in Hesse.

14. In the Grand Duchy of Hesse, in particular, numerous cases occurred before 1886, of prosecutions of German-Americans on their return to Germany, because of neglect of their military obligations. In response to protests, the State Ministry, in order that a rule of action might be established for the Duchy promulgated on October, 1888, the following decision and interpretation of the treaty between the United States and the Grand Duchy:

“ das nicht allein die Strafverfolgung Amerikanischer Staatsangehöriger wegen der durch die Auswanderung oder nach der Auswanderung begangenen Verletzung der Wehrpflicht sondern auch die Vollstreckung eines deshalb erlassenen Urteils ausgeschlossen erscheint. Dabei ist es gleichgültig ob der Verurteilte zur Zeit des Urteilserlasses bereits naturalisirter Staatsangehöriger war oder es nachträglich geworden ist.” Or in English:

“Not only the prosecution of an American citizen on account of infraction of his military obligations through emigration or after emigration, but the fulfillment of any judgment which may have been recorded against him appears to be excluded. It is also indifferent whether at the time of the judgment he was a citizen of the United States or became one afterwards.”

In respect to this last clause Hesse goes further than the other German States, especially Bavaria and Baden, which expressly declare that unless the German-American is actually a citizen he cannot be considered to come within the meaning and protection of the treaty. The point is one of importance deserving to be especially noted in the treatment of the cases of German-American citizens formerly living in Hesse.

Completion of Military Service.

15. Those persons, also, who have completed their time of military service and have reached the age of 31 years may return to Germany after becoming citizens without fear of being held liable for non-fulfillment of any additional military duty that may have been required during their absence, except in case of war. Even in case of war and of a general summons to all Germans in the United States to return to their military duty, those Germans who are 45 years of age and who afterwards become citizens may not be held liable by the German law, since no German is liable for military duty of any kind except between the ages of 17 and 45.

Minor Children.

16. It is also distinctly recognized that German military law has no bearing upon the minor children of German parents, who are still in their minority when the parents become American citizens, nor upon the children born in Germany of German-American parents, when the latter have not resided in their native State of Germany more than two years and intend to return to America or having resided there more than two years—the length of time of residence permitted before citizenship shall be considered to have elapsed—

can prove their intention to return to America to reside. In this connection, it should be remembered that this restriction of two years' residence refers only to residence in the particular State of which a German-American is a native. For example, a Bavarian who has become an American citizen may reside in Prussia as long as he likes without being considered to have given up his American citizenship, while were he from Prussia, he could only return to Prussia under the two years' residence limitation.

Having considered the treaty provisions and having seen that Germany as a whole only permits return of German-Americans to Germany without molestation either when one emigrated when he was too young to be liable for military service or when he was too old, or when he had fulfilled his military obligations, or when his infraction of military law by his emigration was not of a sufficiently grave character to be considered desertion, let us, then, consider when Germany does regard a returning German-American as liable. Since in all the treaties desertion is a crime specially excepted from non-liability, it will be well to consider exactly the definition of desertion, unpermitted emigration and liability in general.

CHAPTER IV.

WHEN A GERMAN-AMERICAN IS STILL LIABLE TO THE GERMAN MILITARY LAW—DESERTION AND ITS OFFICIAL DEFINITION—WHEN MILITARY OFFENSES ARE OUTLAWED.

Desertion, 17.

Overstaying leave, 18.

Disobedience of notice to serve, 19.

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Desertion.

17. Above and beyond all other offenses in the eyes of German military law, saving, of course, treason, is desertion; treason itself being the gravest form of desertion. There is no treaty, no assumption of new citizenship that can avail to protect a former German subject from its consequences should he come into the power of the German authorities and be proceeded against because of this crime. In time of war, though in no case in time of peace, he may be punished

for treason with death. The only escape for a deserter is avoidance of Germany, or should he, while the stigma of desertion still hangs over him, return to Germany, he may only do so with safety should his offense be outlawed or should he be pardoned by the head of the State. Stringent as the penalties for desertion are, it is necessary that the offense be sharply defined. Says the Military Penal Code, section 69: "Desertion (Fahnenflucht) ist die unerlaubte Entfernung in der Absicht sich seiner gesetzlichen oder übernommenen Verpflichtung zum Dienst dauernd zu entziehen." Or in English: "Desertion (flight from the colors) is the unpermitted absenting of oneself with the intention to escape permanently, one's legal or accepted obligation to (military) service." That there may be no doubt as to what "unerlaubte Entfernung" (unpermitted absence) may mean, sections 64, 65 and 68 of the Militar Straf Gesetzbuch (Military Penal Code) define it as follows: "Unerlaubte Entfernung is, besides voluntary absenting of oneself from the troops or from his military post or overstaying of leave, also present when a person of the 'Beurlaubtenstand' (that is to say a person not in active military service but who is yet unfreed from his military obligations) does not obey, within three days after the time fixed, after a declaration of war,

or an ordered mobilization, a call to service or a published command to place himself at the disposition of the military authorities."

Overstaying Leave.

18. The articles of war, however, recognize the fact that a soldier may overstay his leave or may voluntarily absent himself from the troops or his military post without being guilty of desertion. It is when the intention to "leave the colors" permanently is present that desertion exists. Since, therefore, the treaties with the North German Union, Württemberg, Bavaria, Baden and Hesse especially reserve the right to punish desertion, even should the deserter become a citizen of the United States, a German-American should not return to Germany should he know himself guilty of:

- (a) Leaving the colors without permission in time of war.
- (b) Overstaying his leave and going to America without the offense being condoned or pardoned.
- (c) Emigration to America without permission after he has received an order to present himself for service, whether in time of peace or war.
- (d) Emigration to America, unless he is above

or below the age for military duty (17 to 45), after declaration of war has been made, or general mobilization is under way or a public command has been published for all persons liable to service to present themselves, even should he have received no personal command.

Disobedience of Notice to Serve.

19. Should the emigrant find himself already in America when the notice indicated in clauses *c* and *d* is given and should he not yet have become and does not become a citizen then if he disobeys it he is just as liable upon returning to Germany for desertion as if the offense were committed while he was yet in Germany, though his simple emigration without his government's consent, if he were not serving with the colors, cannot be considered desertion.

Upon this point, the celebrated German jurist, Dr. Cahn, says in his digest: "Das Reichsgesetz ueber die Erwerbung und den Verlust der Reichs und Staatsangehoerigkeit." (Imperial law concerning the acquirement and loss of Imperial and State citizenship, pp. 178-179.) : "Die blosse Fortreise eines beurlaubten nicht bei der Fahne stehenden Reservisten oder Landwehrmanns ohne Auswanderungsconsens bez. ohne vorherige

Anzeige ist keine Desertion sondern eine nur mit geringer Strafe bedrohtes Disciplinarvergehen. Erst wenn an den Reservisten oder Landwehrmann eine Gestellungsordre durch Zustellung an ihn selbst oder in seinem letzten Wohnort oder durch öffentliche Bekanntmachung ergangen ist und er diesen Befehle nicht folge leistet macht er sich Desertion schuldig und wenn dies innerhalb der ersten fünf Jahre seines Aufenthalts in Amerika geschieht, so schützt ihn der Vertrag nicht, indem die ohne Consens erfolgte Auswanderung erst nach fünfjährigem Aufenthalt und Naturalization zu einer rechtlich perfecten Auswanderung wird." Or in English: "The simple going away of a member of the Reserves or National Guards, not serving with the colors, without consent to his emigration or without previous notice on his part is not desertion but only an infraction of discipline liable to a mild penalty. Only when a member of the Reserves or the National Guards does not observe an order to report for service, served on him personally or sent to his last place of residence, or when a public command is made and he does not obey it, is he guilty of desertion [this public command being a publication directed to him in the official paper of his supposed last residence place in Germany] and when this occurs within the first five years of

his residence in North America then the treaty does not protect him, since his emigration without consent only becomes a legally perfect emigration after five years residence and naturalization."

Excuse for Disregarding Notice.

20. Should, however, a German of military age have gone to America with or without consent or should he have emigrated before the military age and become of military age before he becomes a citizen and then receive such an order to report for duty, there is a way in which he may avoid obedience to the order and at the same time avoid any possible disagreeable consequences of such disobedience upon returning later to Germany as a citizen or non-citizen, viz: Upon receiving such order should he before the nearest German Consular officer show good reasons, such as sickness, the loss of a good position, business losses, etc., why he cannot well obey, he is entitled to the Consular officer's certificate to that effect which he may forward to his particular military bureau as a sufficient excuse for non-observance of the order.

Desertion not Forgotten.

21. It will be seen that the German law never forgets desertion. There are other infractions of

less consequence in which its memory is also good. For example: A German who having gone to America acquires citizenship there and returning to Germany remains in his native State more than two years (without evident intention to return) in case he has not completed his 31st year, may be drawn into military service. If he has been drawn as a recruit and afterwards though not having yet served with the colors, goes to America he may on his return as a citizen, be made to serve, or undergo such punishment as may be fixed.

Loss of American Citizenship.

22. The son of a German-American who through continued residence in Germany has lost his American citizenship is liable to German military service in case he himself has not acquired American citizenship and this is the case also even if he is born in America, should he not have acquired citizenship there.

Two Years' Residence in Germany.

23. It is also the case that German-Americans having lived two years in Germany and having returned to the United States cannot, *eo ipso*, demand the right of a renewed residence of two years in Germany. On the contrary, Germany

has the right upon their return for a lengthy residence, to order them at any time to leave the country or to consider them after two years' residence in their native State as having lost their American citizenship, as being in fact, "men without a country" though amenable to the laws of Germany's military service. Though permission to emigrate may be given to those who are liable to military service when they secure from their district recruiting commission (Kreis Ersatz Commission) a certificate that the emigration is not undertaken with a view to escaping military service, still, during the time the emigrant is in the United States, should he receive orders to report for duty and disobey them he is liable to the penalty of the German law at any time that he may return to Germany before he is a citizen. After he becomes a citizen he may return in safety, having with him the original permission to emigrate, even though he has disobeyed the order.

Serving With the Colors.

24. In fine, it may be said that a German having become an American citizen with an otherwise clear record is liable on his return to his native land for offenses against the military law, and in the first degree for that of desertion, after he has begun to serve with the colors. From punish-

ment for offenses committed by him against the military law before he began to serve with the colors he is protected by his American citizenship, this right being granted by the treaties already mentioned, unless he shall have been notified, before his emigration, to present himself for service.

Outlawing of Offenses.

25. Military offenses, including even desertion, may be outlawed, and in what manner, we shall see in the next chapter. In general, it may be said if no legal intervention is made in the case by the authorities before the lapsing of a term of years proportionate to the offense, the offense is outlawed, but since the German military authorities are as little neglectful of their duty in this as in other respects, it would be in the highest degree unsafe for a German-American, guilty of desertion and counting upon his offense being outlawed to return to Germany expecting immunity from punishment.

CHAPTER. V.

PUNISHMENT THAT MAY BE VISITED UPON GERMAN-AMERICANS FOR INFRACTION OF GERMAN MILITARY LAW.

The German subject to two courts, 26.

What constitute offenses, 27.

Penalties provided, 28.

Annulment of judgment, 29.

The military courts, 30.

Deserter's avoidance of Germany, 31.

Offenses seldom outlawed, 32.

The German Subject to Two Courts.

26. The German is subject in his military capacity to two courts accordingly as he is in active service or in the Beurlaubtenstand. The latter condition is when he is a member of the Reserves or of the Landwehr or has a furlough of indefinite length. In active service he is subject to the military court, while in the Beurlaubtenstand or as a person liable to military duty but not having yet served, he is liable to the civil courts, for offenses against the military law.

What Constitute Offenses.

27. As the various treaties provide that no emi-

grant shall be free from the consequences of an offense committed previous to his emigration, with exceptions already dwelt upon, unless he is pardoned or the offense is outlawed, it is of importance to consider what constitute offenses against the military law for which the returning German-American may be held liable and also when those offenses are in fact outlawed. To this end the cases coming under the jurisdiction of the civil law will be first considered, since cases of this kind are most frequently connected with returning German-Americans.

Penalties Provided.

28. Section 140, of the Civil Penal Code says: A Wehrpflichtiger, (that is a German sound of mind and body who is between 17 and 45 years of age) who with the intention to escape service in the standing army or navy leaves the empire without permission or having reached the age of military liability (i. e. 20) remains without the empire, shall receive a money fine from 150 marks (about \$37) to 3000 marks (about \$750) or imprisonment from one month to one year. This paragraph provides for punishment for unallowed emigration and since it is an offense committed through the emigration itself and not before emigration (for which latter offenses the

treaty does not provide immunity) it cannot justly be alleged against a German who has gone to America and there acquires citizenship.

Annulment of Judgment.

29. It is, however, maintained by Germany that should an action against a German-American have taken place and judgment have been rendered, its execution is not to be considered as annulled by the treaty but annulment must be sought for through favor of the head of the State. This provision is in so far important that property of the accused may be levied upon to recover any fine placed upon him. An exception to this rule is Baden, which reserving definitely in her treaty the right to punish former Badeners who have gone to America; 1, after being drawn as recruits; 2, when in service; 3, when as indefinitely furloughed or members of the Reserves or Landwehr they refuse to return when ordered to do so, also declares she will not hold them liable for any other form of military offense and will therefore annul at once any execution that may be levied upon their property as soon as American citizenship is proven (Treaty United States and Grand Duchy of Baden, July 19, 1868.) Should, however, judgment under this section have been rendered, then it is outlawed: if only a money

fine shall have been imposed, in three years; if imprisonment, then in five years.

The provisions of sections 2 and 3 of this paragraph are also inapplicable to Germans who become American citizens when the offense only actually takes place through the emigration but they deserve to be quoted for the reason that they provide different fines and penalties which may be adjudged against emigrants without their knowledge, though contrary to treaty provisions. Section 2 says: An officer or a physician of officers' rank of the Beurlaubtenstand who emigrates without permission may be punished with a money fine up to 3000 marks or \$750 or with arrest or imprisonment up to six months. Section 3 is as follows: Every Wehrpflichtiger who after public notice or a definite order from the Emperor, during the time of war or threatened war, emigrates in contradiction to the same, may be punished with imprisonment up to two years and in addition by a money fine up to 3000 marks. These offenses may be outlawed as under the first section. It has happened, however, that returning German-Americans have been proceeded against under these sections. There is, according to the treaty provisions, no authority for that and any German-American has a right to protest against even examination on a complaint founded or

these grounds; unless by long residence in Germany he should have lost his American citizenship. But cases are not lacking also where returning German-Americans have found themselves legally liable to punishment by German courts.

The Military Courts.

30. Having examined the jurisdiction of the civil courts it is now necessary to consider the military courts. Until October, 1872, the different independent States of what is now the Empire of Germany maintained their own troops and in consequence had their own definitions of infractions of military law and severally indicated what punishments should be the consequence of such infractions. Upon the date mentioned, in consequence of the union of the various States as the German Empire the entire military strength of the States forming the empire was placed under a uniform military penal code. It will not be necessary to consider the various infractions of military law which take place while the soldier is serving with the colors for the reason that either he has already suffered punishment or has escaped punishment by flight. In the latter case he is guilty of either desertion or unlawful absence from the colors and in that event the pun-

ishment for the offense, should he thereafter come into the hands of the military authorities will be combined with the punishment which may be visited upon him for any offense committed prior to said desertion or unlawful absence. As to the punishment following upon unlawful absence the Military Penal Code (Militär Straf Gesetz Buch, chapter 1, section 64,) says: Whoever on his own account goes away from his company or his military position or intentionally remains away or exceeds furlough that may have been granted him, will, on the ground of unlawful absence, be punished with imprisonment for six months. Should the absence last longer than three days, then he will be punished with imprisonment up to two years and should such absence occur while the troops are in the field he may be punished with imprisonment up to five years.

Sec. 68 declares: Similar punishment (imprisonment up to five years) affects a person of the Beurlaubtenstand (members of the Reserves and National Guard) who do not announce themselves as ready for service within three days after a published notice of preparation for war, or mobilization or a published demand that he take upon himself his definite duties.

As to desertion, says sec. 69: "Whoever is guilty of unlawful absence with the intention to

escape permanently his legal or accepted obligation to military service is to be punished for desertion." In practice the deserter is usually punished with imprisonment for from six months to two years. In addition to this there is the money fine (*in contumacium*), usually levied against a deserter as soon as he disappears. The payment of this fine in no wise releases the deserter from further prosecution and punishment. This should be clearly borne in mind since cases have occurred where German-Americans, or relatives for them, having paid such a fine have returned to Germany thinking themselves free from any further liability to the law, but have been proceeded against and punished by imprisonment. The offense is further treated of in the following sections:

Section 70. Desertion is to be punished with imprisonment of from six months to two years and the first repetition of it with imprisonment from one to five years.

Section 71: Desertion in the field is to be punished with imprisonment from five to ten years.

Section 73: Desertion from a post before the enemy or from a besieged fortress is to be punished with death and the same punishment is to be visited upon a deserter, if caught, who goes over to the enemy.

Section 76: The outlawing of the offense of desertion begins with the day when the person has fulfilled his legal or accepted obligations to military service, provided legal action has not already been taken against him. (vid. Solmer "Strafrecht und Strafprocess für Heer und Marine," pp. 199 and 316.)

Deserter's Avoidance of Germany.

31. From these various provisions it will be seen that the German-American citizen who knows himself to have been guilty of desertion or unlawful absence from the colors will do well to avoid visiting Germany. Not only does the treaty between the various German States and the United States distinctly provide that the acquirement of American citizenship shall be no protection against the crime of desertion in case the deserter comes within the jurisdiction of the German authorities, but it should be understood also that the German authorities have very long memories. The chances of a deserter who may return to Germany twenty years after the offense being proceeded against are greater than they are that he will be overlooked. The "unlawful absence" of a member of the Reserves, arising through the fact that residing in America and before he has become a citizen an order for mobili-

zation has gone forth to which he has paid no attention, might be punished even should the man concerned afterwards become a citizen and then return to Germany. But while this right except as modified by treaty, remains to Germany, in practice it is but seldom followed, the proof that the man concerned is really an American citizen and the request of the American ambassador usually being sufficient to secure release.

The treaties provide that no German who leaves Germany and becomes an American citizen shall be punished for an offense arising either through the fact of his emigration as a separate act or after his emigration, except for desertion and the **extremest** form of unlawful absence. For this reason the German who leaves Germany without permission though he be a member of the Reserves or National Guard, but is not serving with the colors, may not be punished on his return, though it is possible he may be proceeded against until the ambassador makes representations in his behalf. Against desertion, however, and unlawful absence arising through his leaving while serving with the colors even though in time of peace he has no defense and can demand no protection. This fact cannot be impressed too strongly upon German-Americans returning to their native land since experience has proven that many German-

Americans guilty of the offenses mentioned have returned to Germany confident that their American citizenship protected them from all interference, and have been vigorously awakened from their complacency.

Offenses Seldom Outlawed.

32. Regarding the outlawing of offenses, the offender has but little to hope. Desertion, it may be said, in practice, is never outlawed. There is to be sure the condition already mentioned that the offense may be outlawed if the deserter returns to his duties and fulfills them, if, in the meanwhile, no procedure has been taken against him. This procedure as a matter of fact, always takes place, and as soon as it does the period of outlawing must begin over again, nor does the time of outlawing begin until the time of service expires which the soldier would have to serve had he not deserted, that is to say twelve years in all, up to and including his time in the National Guard. Officially, however, there is provision for the outlawing of desertion. The outlawing of a prosecution for desertion presents also an exception to the general rule in that it is officially declared to begin on the day on which a deserter would have finished his term of military service if he had not deserted. It is necessary to distinguish between

the outlawing of prosecutions for offenses and the outlawing of a judgment legally rendered against the offender. Offenses against the military as well as the civil law consist in crimes, misdemeanors and minor infractions of the law. These may all be outlawed and in order to interrupt the process of outlawing there must be some action on the part of a judge competent to interfere, the simple action of a prosecuting attorney or other officer of the law not being sufficient.

First: as to the outlawing of prosecutions for crimes. The divisions are as follows:

- (a) If the crime is one punishable with death or life imprisonment and no action is taken against the offender in the meanwhile it is outlawed in twenty years.
- (b) If the offense is punishable with more than ten years, but less than twenty years, imprisonment it is outlawed in fifteen years.
- (c) If the offense is punishable with imprisonment for less than ten years it is outlawed in ten years.

The outlawing of prosecutions for misdemeanors is as follows:

- (a) When the misdemeanor is punishable with imprisonment for more than three years, it is outlawed in five years.
- (b) In all other cases it is outlawed in three

years. The outlawing of prosecutions for minor offenses takes place in three months.

Second: As to the outlawing of judgments rendered:

- (a) When the judgment is death or confinement in a penitentiary or fortress for life the judgment is outlawed in thirty years.
- (b) When the judgment is confinement in the penitentiary or in a fortress for more than ten years but less than for life it is outlawed in twenty years.
- (c) When the judgment is confinement in a penitentiary up to ten years or in a fortress of from five to ten years or simple imprisonment for more than five years it is outlawed in fifteen years.
- (d) When the judgment is simple imprisonment or confinement in a fortress for from two to five years or a money fine of more than 6000 marks it is outlawed in ten years.
- (e) When the judgment is simply imprisonment or confinement in a fortress up to two years or a money fine of from 150 marks to 6000 marks, it is outlawed in five years.
- (f) When the judgment is simple arrest or a money fine up to 150 marks it is outlawed in two years.

The outlawing begins on the day when the

judgment became a perfected legal act. The outlawing of a prosecution, however, begins on the day when the offense began to be committed in case it was one extending over a length of time. It will be seen therefore that while the outlawing of offenses, civil and military, may occur, it would be highly injudicious to reckon upon that fact. In any case the offender who thinks his offense has become outlawed would do well to inform himself whether the competent court of the place where the offense occurred had taken any action in the matter. This information may be secured without trouble through any inquiry bureau such as are attached to the prominent commercial agencies. When the conditions above quoted from the German civil code are fulfilled the inquirer may feel himself safe but, unless he has received a pardon, only then.

CHAPTER VI.

POSSIBLE CASES OF RETURNING GERMAN-AMERICANS AND THEIR LIABILITY OR NON-LIABILITY.

Twelve possible cases, 33.

- 1st—A. Emigration of a minor who returns without securing citizenship.
- 2nd—B. Minor born in the United States of German parents, who goes to Germany to live.
- 3rd—C. Born in Germany and returns from America an adult, but is not a citizen, through failure of father to complete citizenship.
- 4th—D. Born in Germany, taken to United States, but brought back a minor after father had acquired citizenship,
- 5th—E. Born in the United States and brought to Germany as a minor after father's death, though after latter had become a citizen.
- 6th—F. Born in United States and goes to Germany after father's death, though an adult before father acquired citizenship.
- 7th—G. Emigrates as a minor to America after notice to serve has been given him, and acquires citizenship.
- 8th—H. Emigrates, though a member of the Reserves, without permission, and becomes a citizen.
- 9th—I. Though a member of the Reserves, emigrates

without permission, and after receiving notice to present himself for service.

- 10th—J. Though a member of the Reserves, emigrates to America, and after his arrival, but before securing citizenship, is notified to serve.
- 11th—K. A native of Alsace-Lorraine emigrates without permission, and acquires citizenship.
- 12th—L. Born in Germany, acquires citizenship in United States, and loses it by long residence in Germany.

Twelve Possible Cases.

33. Having considered the various laws and treaty provisions which bear upon the liability of born Germans who may return to Germany as American citizens it may be instructive to bring forward supposititious cases of returning German and see in what manner existing laws might or might not affect them.

First case: A is a German 18 years of age and is consequently liable to military service though not yet of the age (20) when he will be drawn into service. Without securing permission from the authorities to emigrate he accompanies his father, who has performed his military service, to America. The father becomes naturalized and when he secures his final papers A is naturally 23 years of age. On his own account he does not apply for naturalization papers. In the meanwhile

a letter has been written to him at his last residing place in Germany requiring him to present himself for military service. Returning to Germany after a lapse of years he is arrested by the military authorities and compelled to serve his full time as a soldier.

Against this judgment and procedure he has no right to protest, since even though his father has become an American citizen he is still a German subject.

Had A secured naturalization as his father did he could not have been so punished since he would have been protected, as an American citizen, by the treaty provisions between Germany and the United States covering such cases.

Second case: B is also the son of German parents, but was born in America. His father, however, has never taken the trouble to become naturalized and B goes to Germany to live before he reaches the age of 21 years. In this case his name does not appear in the German military records but nevertheless it is liable to be entered in such records and he is liable to be called into service in the same manner as every other German subject; provided, however, that he was not born after his father had been ten years out of Germany. This provision finds its ground in the fact that a German absent from his native land for ten years and

in that time not having announced to a German Consul his intention of retaining his German citizenship is considered *eo ipso* to have lost it, even though in the meanwhile he may not have acquired citizenship of any other country. In this case the son would not be subject to Germany, unless returning to Germany he voluntarily assumed German citizenship. Such assumption would be presumed if he should on returning, remain for more than two years in a dependent position as a member of a German family. It could not be assumed were he in Germany for the purpose of study or for business reasons. Under the 14th amendment to the Constitution of the United States, B would be considered by the United States for purposes of protection, a native citizen until he should assume other citizenship of his own accord.

Third case: C is in a rather different position. Born in Germany he is the son of a German father, who, having gone to the United States, applied for and received his first papers but never received his final citizenship papers and is accordingly not a citizen of the United States, or it may have happened that the father died after the issuance of the first papers and before he received his second and final papers. Should then the son C return to Germany under the age of 31 years,

the age limit in time of peace, and should he not have secured citizenship on his own account in the United States, he is liable to military service exactly as any other German, and this notwithstanding the fact that he may even be unable to speak the German language. There is, however, one very important probable exception to this rule, and that is in the Grand Duchy of Hesse. In this German State, in accordance with a decision of the ministry on non-liability of date October 10, 1888, a former Hessen who has gone to the United States and secured neither his first nor his second citizenship papers at the time judgment is taken against him may not be prosecuted for unallowed emigration or for infraction of his military obligations arising through or after such emigration, should he subsequent to the judgment return to Germany as an American citizen. This decision of the ministry says expressly: "dabei ist es gleichgültig ob der Verurteilte zur Zeit des Urteilserlasses bereits naturalisirter Staatsangehöriger war, oder es erst nachträglich geworden ist" (thereby it is entirely indifferent whether the adjudged was at the time of the judgment already a naturalized citizen or became so afterwards), Reichsanzeiger, October 24, 1888.

It may perhaps be well to remark that all children of German parents born in America are by

virtue of that fact considered in Germany as American citizens and should the father, having secured naturalization, return to Germany with such children before they are of age they are still considered as American citizens and may not be drawn into military service. However, having reached the age of 21 years they may choose for themselves whether they will become German subjects and may then of course be drawn into service. It lies also within Germany's right to insist upon such children leaving the country either before or after their majority. This is distinctly set forth by Cahn (Page 182, section 25) of the German Foreign Office in his "Comments on the treaties between the United States and the North German Union, Bavaria and Württemberg." International comity, however, between two friendly nations is almost a binding principle of international law and therefore the right mentioned is one which Germany would only exercise in case of absolute need. But once exercised, either with or without reason, Germany could not be called to account by the Government of the United States, without the violation of that firmest factor in all international law—a definite treaty provision.

Fourth case: The case is decidedly different with D, however. He is the son of German pa-

rents; was born in Germany and was taken to the United States when but a child. His father became a naturalized citizen of the United States during D's minority and then returned to Germany with D, who, by virtue of his father's naturalization, must also be considered a citizen. The father, however, buys a residence, or engages in business or gives other evidence of his intention to remain in Germany. D in the meanwhile has been in Germany two years and has reached the age of twenty-one. In that event he may be looked upon as having renounced all allegiance to the United States and without further ceremony may be drawn into military service. Nor would the right of refusal be with him. Neither would the United States have a right to insist upon his release on the ground that he is an American citizen. This definite provision is clearly set forth in Section 11 of the Reichsmilitärgesetzbuch of May 2, 1874. Of course the United States might with all propriety set forth the fact of D's citizenship and might request, not demand, his release from military service. It is probable, should the request be accompanied by a statement that D intended to return to the United States to make his home, that considerations of international comity would induce his release but Germany would be entirely within her

right in refusing it. It is hardly necessary to add that the same provision applies to the father of a family who is a born German, but a naturalized American, and who returns to Germany to remain, always provided that in neither case has the person concerned completed his thirty-first year. When that is the case, under the German law, he cannot be called into military service at all in time of peace.

Fifth and Sixth cases: E's case and that of F present other features. They are the sons of a German father but born in the United States after the naturalization of the father. The father dies and the mother returns to Germany with the two sons. Now if both sons were minors at the time of the father's death, then, by virtue of the father's naturalization they are both recognized in Germany as American citizens and may not be drawn into military service since Germany, by treaty provision, has agreed to recognize the application of any existing American laws to their case. Should, however, F have attained his majority before his father's naturalization and E afterwards, then, since the American law does not recognize F as a citizen unless he himself has become naturalized, he, F, may be drawn into service in Germany while E could not be, despite the fact under German law that were F not ex-

cluded by the United States law from citizenship, he would be also, under German law, as free from service as his brother.

Seventh case: With G there is another variation. He is born in Germany the son of German parents, and being between 17 and 20 years of age is liable to military service. He is also with others of his age, notified by publication that on a certain day he must present himself for service. In the meanwhile, his father emigrates to America and takes G with him. There G acquires citizenship and at the age of 23 years returns to Germany for a visit, a legal citizen of the United States. He is at once arrested charged with "unallowed emigration" and violation of his military obligations. Is he guilty or not?

The question is easy enough to answer so far as the first alleged offense is concerned. Of that offense he is not guilty since the treaty provides that a born German who may emigrate to the United States and become a citizen there may not be punished for any infraction of the German law arising through the act of emigration. For the same reason G could not be held accountable after becoming an American citizen for ignoring an order to announce himself for service should the order have been issued after he had left Germany. If, however, in the meanwhile a fine has

been entered up against him it cannot be considered as being without effect by virtue of the treaty but may only be removed by a pardon from the government.

The decision of the second question as to his guilt or innocence of the charge of violating military law by emigrating to America after he had received through publication or otherwise the notice to announce himself for service, is not so easy. Having not yet served with the colors he can not be considered a deserter, nor is it the practice of the German law to adjudge him directly guilty of an infraction of the law by reason of his having not obeyed the publication. The practice, is, however, to arrest such men as disobey the publication and force them at once into service compelling them to serve a longer time than their fellows who had obeyed the publication. Since, then, no direct condemnation of G's offense has taken place he may not, on his return as an American citizen to Germany, be punished for his offense. Should he, however, through any reason renounce his American citizenship and have not reached his 31st year, he may not only be drawn into military service but the punishment of his original offense in refusing to obey the publication may be visited upon him in the shape of a longer term of service.

Eighth case: H's case is one which is directly provided for by German law and is one that happens very frequently. He has served as a regular soldier and has been transferred to the Beurlaubtenstand, that is to say, has become either a member of the Reserves or of the National Guards. Though belonging to Germany's military establishment he is not serving for the time with the colors though liable to be called in at any time. Without asking permission he emigrates to the United States and becomes a citizen there. He returns to Germany and is notified that he must pay a fine not exceeding \$100, because of his infraction of the regulation which requires every member of the Beurlaubtenstand to obtain the consent of his military superiors before he emigrates. Though, through the intervention of the Embassy, he may be pardoned the fine, still the German Government has a right to fix it and insist upon its payment. This right remains to Germany in spite of the provision that only infractions of the law committed before emigration and not through emigration can be punished. It is held that such a member of the Beurlaubtenstand has committed an infraction of the law in the moment when, without consent, he enters upon his journey to a port of departure since the actual fact of emigration only takes

place when he has left his native land. As a rule the fines for this sort of infraction of the law do not exceed 150 marks or about \$40, nor are they imposed in every instance since the law distinctly says: "An offense of this kind is not to be considered as desertion but simply as an infraction of discipline to be punished with a small fine."

Ninth case: With I the matter takes a more serious form. It may be mentioned also that the difficulty in which he finds himself is one which almost invariably lies at the bottom of all serious cases of complaint made against German-Americans who, returning to Germany, find themselves arrested or proceeded against by the military authorities. The undesirable position in which persons of this category find themselves is to be ascribed in almost every case to their ignorance of the limitations of their American citizenship in protecting them. It is of the utmost importance therefore to bear in mind the circumstances surrounding I's case, remembering also that even though at the request of the United States Government prosecution has at times been dropped in such cases or punishment suspended, the German Government does not regard favor of this kind, shown in any particular case, as establishing a precedent but distinctly claims the right to

prosecute former German subjects guilty of the offense alleged even though they may have been American citizens for many years. This right is one which cannot be disputed since it is provided for by treaty, that of Baden with the United States on the subject being especially clear.

I is a member also of the Beurlaubtenstand. He intends emigrating to America but before he carries out the intention he receives a *Gestellungs* order, that is to say, an order to present himself for service. This order may be either in form of a notice addressed to him personally to his last address or it may be in the form of a publication in a newspaper. It may be remarked also that should the notice have been addressed to him at his last address while he was on the high seas the circumstances would not be altered in the least. It will be supposed, however, that I has received his order directly in hand. Instead of obeying it he carries out his original plan of emigrating to America and becomes an American citizen there. He has, whether he is aware of it or not, made himself guilty of desertion.

Returning to Germany after the lapse of many years I is proceeded against by the civil law, under complaint of the military authorities, and is visited with a punishment of fine and imprisonment; he may also be condemned, if he has not

completed his thirty-first year, to serve in the army for such length of time as he still had to serve at the time of his emigration, in the case of a member of the Reserves, perhaps eight weeks. Against this judgment the United States has no right founded upon international law to appeal on account of I's having become an American citizen. It is not impossible, however, that an appeal through the Embassy in his behalf would be of avail on the score of international courtesy.

Tenth case: The case of J also a member of the Beurlaubtenstand is similar to that of I with the exception that J has already reached America and has declared his intention to become an American citizen when his order to announce himself for service is mailed to him to his last address in Germany or is served by publication in an official paper in Germany. The fact that J had declared his intention to become a citizen, however, does not aid him since the treaties apply only when complete citizenship has been secured. He pays no attention to the order, not even making a declaration before a German Consul that he is unable to obey it. J might suppose that even should he disregard this order he would have nothing to fear on his return to Germany since the treaty provides that only offenses com-

mitted prior to emigration may be reckoned against the emigrant. As stated, however, he does not come within the treaty provision, but may claim its protection when he acquires complete citizenship. Even then he is liable to the punishment for unallowed emigration.

The fact is, that offenses against the military law of this character, that is to say desertion, for such it is considered, are excepted from the protection accorded by the treaty. The definite provision of the treaty with Baden on the subject which may be taken as the interpretation also of the other German States is as follows: An American citizen formerly a Badener may be proceeded against under the law of Baden: "When he emigrates without permission while indefinitely excused; or while a member of the Reserves or of the National Guard, after he has already received an order to announce himself for service or after a published command to enter into service has been made; or after war has broken out."

This is certainly plain enough but that there may be no possible room for doubt in the matter; that persons knowing themselves to be guilty of the offense indicated may clearly understand the attitude of the German Government toward them in spite of the fact of their American citi-

zenship, it may be well to quote on the subject the words of a well known German writer on international law and commentator on treaties, Dr. William Cahn, of the German Foreign Office, in his standard work, "The Imperial Law Regarding the Attainment and Loss of Imperial and State Citizenship." On pages 178 and 179 he says regarding the treaty provision spoken of: ". . . . wenn an den Reservisten oder Landwehrmann eine Gestellungs order durch Zustellung an ihn selbst oder in seinen letzten Wohnort oder durch öffentliche Bekanntmachung ergangen ist und er diesem Befehls nicht folge leistet, macht er sich der Desertion schuldig und wenn dies innerhalb der ersten fünf jahre seines Aufenthalts in Amerika geschieht, so schützt ihn der Vertrag nicht indem die ohne Consens erfolgte Auswanderung erst nach 5 jährigem Aufenthalt und Naturalization zu einer rechtlich perfecten Auswanderung wird."

In English: "When a member of the Reserves or the National Guards receives an order to announce himself for service either through the delivery of the order to him personally or at his last dwelling place or through publication and does not obey the command he becomes guilty of desertion and if this occurs within the first five years of his residence in North America

then the treaty does not protect him since an emigration without consent becomes a complete emigration only after five years' residence and naturalization."

This may be definitely accepted as an expression of the view of the Imperial German Government and therefore J and any other in J's position has nothing to demand as a right from the German authorities should he be proceeded against for desertion should he visit Germany before his American citizenship is complete.

It is hardly necessary to add that those persons who have actually deserted while serving with the colors, have gone to America and have become citizens are liable on return to Germany to be prosecuted for desertion no matter if they have been American citizens for many years. In their case, a pardon which may be extended in the other cases is practically excluded. Their only safety from punishment is to stay away from Germany unless a pardon is secured.

Eleventh case: K's case though exceedingly simple is not without interest. He is a native of Alsace-Lorraine, and having committed any one of the infractions of military law mentioned, whether one of the mildest or severest is for our purposes quite indifferent, emigrates to the United States and becomes a citizen; returning to

Germany he is arrested and charged with the offense. Perhaps it is one with which a friend of K's from another part of Germany has already been charged and from the punishment for which he has escaped by means of his American citizenship, and he counts upon his citizenship protecting him in the same way. In this, however, he is sadly mistaken. The reason is simple. There is no treaty between the German Imperial Government and the United States covering military offenses on the part of former natives of Alsace-Lorraine, that province having been obtained by Germany subsequent to the different treaties already quoted, (see Cahn—Sec. 24, p. 176). The German Government has declared that in cases such as K's it will proceed in accordance with the facts, the inference being that the guilty person will be treated as would be a German from other German States who has gone abroad, in a manner violating his military obligations and has returned with or without acquiring other citizenship.

Twelfth case: The list of examples may be closed with the case of L, which though rare still sometimes occurs. L is a born German who has gone to America and acquired citizenship there; he returns to Germany and residing for more than two years in the State of his birth is considered

as having lost his American citizenship. Despite the fact that he has not thereby necessarily regained German citizenship he may be drawn into military service but only in case he has not completed his thirty-first year. It should be stated, however, that should he be able to prove that he has been detained in the State of his birth in Germany for two years by circumstances beyond his control and that he intends to return to America for the purpose of making his home there he would be excused from military service though the authorities would have a perfect right to insist upon his leaving at once. The proviso regarding remaining for more than two years in the State of his birth is extremely important since should a born Prussian for example, return to Germany and remain for more than two years in some other German State, Saxony for instance, he could not be considered as having lost his American citizenship. That only takes place when he remains for more than two years in the State of his birth.

It should be remembered, however, that no foreigner has an absolute right to remain in any German State for the mentioned two years or for any other definite length of time. The right remains to the German Government to require the departure of any foreigner at any time and for

any reason that may seem sufficient to the government. It goes without saying, however, that this right is only exercised for substantial reasons. One of the reasons announced by the government as being sufficient is a scornful attitude toward the German Government or the German system or behavior calculated to call forth in others the same feeling.

CHAPTER VII.

WHAT A GERMAN-AMERICAN RETURNING TO GERMANY MUST DO TO AVOID PUNISHMENT FOR ALLEGED OFFENSES AGAINST MILITARY LAW AND HOW HE SHOULD PROCEED WHEN ACCUSED.

- Need of a passport, 34.
- Passport not sufficient, 35.
- Birth certificate desirable, 36.
- Pardon for offenses, 37.
- Renewal of passport, 38.
- Bodily defect, 39.
- Notifying the Consul, 40.

Need of a Passport.

34. It might seem axiomatic to say that every American visiting Europe should be provided with a passport, issued by the State Department, setting forth the fact of his American citizenship and that German-Americans returning to Germany should be especially careful in this regard. The fact remains, however, that very many German-Americans return to Germany without this all-important document. The cases of this kind where such neglect has been followed

by very disagreeable experiences are far from few. Every Consul has them brought to his attention at frequent intervals and must, at times with considerable difficulty, extricate his fellow citizen from difficulties which could have been avoided easily had the person concerned taken the trouble to procure a passport before leaving the United States.

In case the traveler, however, has not secured a passport in America, he should do so upon arriving in Germany. To this end he should apply to the nearest United States Consul who will make out his application and forward it to the Embassy in Berlin where the passport will be issued, signed either by the Ambassador or, in his absence, by the Chargé d' Affaires. A passport issued by the State Department requires a fee of one dollar. When application is made through a Consulate the fee is two dollars. Should the applicant be a born German, he must produce either his original citizenship papers, only the final papers having value, or a certified copy of them and should he be the son of naturalized parents, having been taken to the United States during his minority and having acquired citizenship through the parents' naturalization, he must produce either the original or certified copy of his father's final papers. The Consul may also re-

quire other proofs of identification to be exhibited to him, such as a letter of credit, personal letters or other personal documents. Citizenship of the United States is too valuable a possession to be lightly considered and since a passport is the visible evidence of it, recognized by all governments, the issuance of such a document is properly surrounded by all possible safeguards.

Passport Not Sufficient.

35. But, as has been shown in previous chapters, the possession of a passport is not sufficient to protect a returning German-American from the consequences of certain offenses against the German military law. From that class of minor offenses already explained and known as "infractions of military discipline" it will protect him from any further punishment than a small money fine. From any punishment for "emigration without consent" it will protect him entirely. Should he, however, have been guilty of not returning to his native country after he has received an order to announce himself for military service or after a war has been declared, he at that time not yet having become a citizen, then he would better to avoid possible trouble, even though the interference might be unwarranted support his passport with a certificate from a Ger-

man Consular officer to the effect that at the time the order was given or the publication made, he was actually hindered from obeying it or had a position or business which would have been lost to him through returning to Germany at the time. Should he have secured permission to emigrate, being at the time of emigration liable to military service, that is to say, between the ages of 17 and 31 years, he should, in addition to his passport, have in his possession the original permission or a certified copy of it and should he have emigrated before he was of an age to be liable to military service, then in addition to his passport, he should have his certificate of birth.

Birth Certificate Desirable.

36. It is also well for the son, born in America of German parents, to be provided with a birth certificate in addition to his passport, since his German name, his presumed ability to speak German and the possession of German relatives in Germany may, in the minds of the German officials form a chain of circumstantial evidence in favor of the theory that he is really a born German, and while his passport would be sufficient, ultimately, to protect him from any serious consequences of this theory, it might not be sufficient to enable him to avoid the annoyance which

the absolute determination of his place of birth through a birth certificate would divert.

Should the returning German, however, have been guilty of desertion then he must bring with him on his returning to Germany either a certified statement of the German court to the effect that his offense had been outlawed or, should that not be possible, he should, even though an American citizen, seek a pardon for his offense and should bring with him in addition to his passport either the original pardon or a certified copy of it. It must be remarked, however, that the chance of a German-American securing pardon for any one of the severer forms of desertion is remote indeed. But whether in possession of the passport and the other documents mentioned or not, the returning German-American should in any event have with him his final citizenship papers. Whatever his offense may have been the possession of such a document gives him the right to appeal for aid to the Consulates and Embassy of the United States, and should he be found entitled to assistance, forms a basis from which to proceed in his behalf, either by demanding for him immunity from punishment or by requesting favorable consideration of his case, according as his offense is one from the consequences of

which American citizenship may or may not protect him.

Pardon for Offenses.

37. From the liability to punishment for desertion while serving with the troops in time of war there is no document that will protect the returning German-American short of an absolute pardon from his former sovereign. It should not be forgotten that the native of Alsace-Lorraine who has become a citizen of the United States is liable, despite his passport, to arrest should he return to his native country, for even the smallest offense against the military law, since, as already mentioned, there is no treaty between the United States and Germany covering this province. For him a pardon is especially desirable.

Renewal of Passport.

38. In another respect also should the returning German-American be careful, and that is with regard to the renewal of his passport. No passport is valid for more than two years, and while a passport which has expired may be considered presumptive evidence of the citizenship of the possessor, it confers upon him no privileges nor does it give him any right to claim the protection

of American representatives in Germany. For this reason, the German-American compelled to remain in Germany longer than two years, should not only secure a renewal of his passport, but should make a sworn declaration of his intention to return to the United States for the purpose of resuming the duties of citizenship there and should set forth the reasons why he is compelled to remain in his native State of Germany longer than the two years accorded him by the German Government. This declaration he should have ready to exhibit to the German authorities upon demand since having remained in his native State for more than two years he may be considered by the German Government to have renounced his American citizenship and may then be proceeded against on account of old infractions of German military law with regard to which the evidence of American citizenship protected him up to the time of the passport's expiration.

Bodily Defect.

39. It may have been also that the born German was unable to perform military service by reason of a bodily defect of some kind. For this reason, unless the fact of his having been excused by the military authorities was recorded by them, he should be able to present upon demand

a physician's certificate setting forth the fact of his incapacity for military service at the time he became liable to serve.

Notifying the Consul.

40. Should the returning German-American be accused of violation of the military law, whether justly or unjustly, he should notify the nearest Consul. Should he have been already arrested then he should also notify the Consul without delay. If the accused is in possession of a passport or his citizenship papers the Consul must interest himself at once actively in the accused's behalf. The latter should explain the facts of the case to the representative of the United States, exhibiting first the documentary evidence proving himself to be a citizen. No time should be lost in thus applying to the Consul and the facts having been placed in his possession there will remain nothing more that the accused can do but await the course of events, unless it may be to procure bail.

Of course it is also understood that before he has found it necessary to apply to the Consul the accused has exhibited to the authorities the documentary evidence showing him to be an American citizen. Should he be summarily arrested his passport may not be taken from him, though

all other documents, even his citizenship papers, may be removed, since the German law recognizes the necessity of his remaining in possession of his passport in order that he may justify his claim to the aid and protection of the Consul. Even though the accused may be arrested in a place where he has no acquaintance legal advice may not be refused to him and he may thus establish communication with the American Consul even should the officials refuse him permission to write directly to this official. There is hardly a large city in Germany where either an American Consul, Vice Consul or Consular Agent cannot be found, but in the event of the arrest taking place in a part of Germany remote from any large city a telegram to one of the Consulates General, at Berlin, Dresden, Hamburg, Coburg or Frankfort will result in the Consular official nearest the accused being informed and in communication thus being established.

While the German Government is disposed to be as courteous as possible to the United States, its officials and other citizens and while because of this courtesy it has upon application by the United States Embassy in many cases granted pardon, or refrained from further procedure against returning German-Americans for violation of the military law, it should be borne in mind that these

cases have been exceptions and may not be considered by other offenders as giving them cause to expect freedom from the penalty for like offenses. The German authorities by reason of their perfect system of records, have long memories and therefore one knowing himself guilty of the offense of desertion will find his surest immunity from punishment in keeping away from Germany entirely.

CHAPTER VIII.

GENERAL BEHAVIOR WHICH SHOULD BE OBSERVED
BY GERMAN-AMERICANS RETURNING TO
GERMANY TO AVOID CONFLICT WITH
GERMAN LAW. THEIR DUTIES,
PRIVILEGES AND RIGHTS.

- Demeanor desirable, 41.
- Danger of drawing comparisons, 42.
- Reference to the Emperor, 43.
- Lese Majesté, 43.
- Disrespect for the Government, 44.
- Assisting emigrants, 45.
- Conforming to regulations, 46.
- Strict obedience to law, 47.
- Freedom from taxation, 47a.

Demeanor Desirable.

41. It may not be amiss to venture a few remarks upon the demeanor desirable to be observed on the part of born Germans who have acquired citizenship in the United States and who after long residence in America during which they have gotten out of touch with German customs and conditions return to their na-

tive land for a longer or shorter stay. There are several reasons why circumspection is necessary, reasons which lie in the essential difference between the two systems of government and the attitude assumed or assumable by the citizens of each towards their respective governments. The attitude taken as a matter of course in America may not be assumed at will by the citizens of the United States towards the German Government without the possibility of disagreeable consequences arising. The reason is not far to seek.

In the liberal atmosphere of America where freedom of personal action and freedom to criticise men and measures, governmental and private, have reached an extent only dreamed of in the most radical circles on the Continent, the German soon finds himself so much at home that he speedily learns to breathe the air of complete personal liberty. He accommodates himself quickly to his new surroundings, to new habits of thought, of judgment and of assertion which in the old days in his native land were unknown to him. So much a part of him have become his new points of view that it is practically impossible for him afterwards to clothe them with the circumspection necessary when he brings them with him into the different conditions existing in the land of his birth.

Danger of Drawing Comparisons.

42. Therefore either unconsciously or provoked by the astonishing differences now for the first time apparent to him upon his return to his native land after years of residence in America, he finds himself continually drawing parallels between customs and conditions in the old world and the new; he finds himself giving utterance to criticism when with his former acquaintances, or new made friends which he never would have dared in the old days when he was still a German subject. Whether these outspoken opinions are founded upon an innocent desire to instruct his companions or are merely called forth by a comparison he cannot resist making, is a matter of indifference. The result remains the same—it is dangerous.

There are many laws in Germany which forbid conduct or expressions of opinion that in the United States are freely allowed. Though in Germany as well as elsewhere, ignorance of the law excuses no man, it is through ignorance of the fact that what in America is permitted and at times even praiseworthy is punishable in Germany, that the former German subject may find himself in a decidedly unpleasant situation. In the first place, the returned German should remember his American citizenship does not pro-

tect him in the slightest from any infraction of the German law while in Germany. He is as much subject to the German law as any subject of the empire.

Lese Majeste.

43. It will be well then to bear in mind the especial points, founded upon experience of actual occurrences, in which his behavior should be exceedingly circumspect. First with reference to the Emperor. Any disrespectful allusion (*lese majesté*) to him may be reported by any hearer to a prosecuting attorney and when that is done the latter is compelled to prosecute the offender. The penalty is imprisonment for a longer or shorter time and is imposed frequently. Nor must any member of the Imperial family be spoken of disrespectfully, nor any other ruler of a German State.

When one considers the freedom to criticise public men in the United States, including the President, it may be readily imagined, how a German-American who has taken an active interest in the political affairs of his adopted country might, in an unguarded moment, speak of personages in Germany in a manner which might be construed as an infraction of the law and be convicted of *lese majesté* in the severest form.

Nor must the returned native refer in contemptuous terms to any Imperial organization. For example, he must not utter an unfavorable opinion too freely concerning the courts, army, the navy or any other department of the government. An offense of this kind comes under the head of "Beleidigung der Regierung" (Insult to the Government) and is also punishable by fine or imprisonment or both.

He must be especially careful in case of dispute with any public official such as a railroad, a postoffice or a police official, and such disputes may arise very easily, not to forget himself so far as to address a single disrespectful word to the official in question. Should he do so, the latter has only to make his complaint to the nearest prosecuting attorney and the other, whether he was in the right or in the wrong regarding the original matter in dispute, will find himself proceeded against for "Beamten Beleidigung" (insulting an official) an insult duly recognized in the German penal code and punishable also with imprisonment.

Disrespect for the Government.

44. The same code in addition provides for the punishment of that person who speaks among his companions of the government, of the army,

or of military service in general in such terms as are likely among these latter to inculcate a disparaging sentiment toward anyone of these organizations or to call forth contemptuous assertions regarding them. It is especially set forth that if a person, not a subject to Germany, is guilty of such an offense he may be ordered forthwith to leave the country or even be punished with imprisonment. When one considers that the German-American of long years of residence in America may not have seen a single regular soldier during his entire time of residence in the United States it will be seen how easily he might be induced to institute invidious comparisons upon his return to Germany where the uniforms of regular soldiery are to be seen on every hand. In this case, comparisons are not only odious but are actually dangerous and the visitor to Germany will do well to refrain entirely from expressing them.

Assisting Emigrants.

45. In another respect also he must be extremely careful and that is not to give advice or assistance with regard to emigration to any German who may have been drawn into military service or who may be liable to military duty. Should he do so, and in consequence of his ad-

vice or assistance the person concerned emigrates without the consent of his government then the advisor makes himself *particeps criminis* and may be punished with imprisonment by the German law even though the person guilty of emigration without permission should escape.

That offenses of this kind may readily happen lies in the fact that the visiting German-American is usually well-to-do and usually has the disposition and the means to assist friends or relatives in Germany towards bettering their condition by going to America. His advice and assistance may have been given innocently but that does not serve to place him beyond the reach of the law. Should he have emigrated to America when very young the visiting German-American will find the rules and regulations which he must observe in Germany entirely new and unknown to him and should he have emigrated when mature, returning after a lapse of years, he will perhaps have forgotten how necessary it was for him formerly to be circumspect in his behavior. It is, therefore, earnestly to be urged that in his entire association with his former fellow countrymen he guard himself from comment of an invidious nature upon men and things in Germany.

Conforming to Regulations.

46. It may also be remarked that he should, without resistance, conform to the numerous government and municipal regulations which will confront him on every hand in Germany and which he will not have experienced in the less bureaucratic United States. It of course goes without saying that any infraction of the civil or criminal law will be as heavily visited upon him in Germany as it would were he a German subject.

Although these remarks are intended in the first instance for German-Americans, the facts stated apply with equal force to native born citizens of the United States.

Strict Obedience to Law.

47. The duties, then, of a German-American returning to his native land are comprised in a strict obedience to the law, to all municipal regulations, to avoidance of invidious criticism of any person or thing connected with the government and to observance of the utmost circumspection in word and deed. He has, however, certain rights and privileges. He may remain in any State of Germany, with the exception of his native State, as long as he likes for purposes of business or pleasure but not more than two years in his native State, without losing his American

citizenship; he may sue and be sued and demand the protection or service of the law the same as any German subject; he may not be compelled to do military duty even in time of war, so long as he remains a citizen of the United States; in case of arrest his passport, the evidence of his American citizenship may not be taken and he may by means of it claim the protection of his adopted country's representatives in case of need, though not in case of financial necessity, unless he be a sailor sailing under the American flag.

In this latter case should he require aid of a material kind because of want or sickness, it must be furnished him, on his presentation of his proofs of citizenship, by the nearest United States Consul. The German-American in Germany, in short, possesses all the privileges and rights accruing to German subjects with the additions noted, conferred upon him by the fact of his American citizenship. Should children be born to him in Germany, they do not need to be naturalized as citizens in America should he return with them to the United States during their minority nor can they be drawn into military service, unless the German Government can prove that the father had no intention of returning to his adopted country and had lost his American citizenship.

Freedom From Taxation.

47a. The right of freedom from taxation for a term, varying in the different German States but in general from six months to a year, is also enjoyed by the German-American visiting his native land. It is self-evident, however, that should he remain for a longer term he must submit to the imposition of the same taxes as the German subject of the same fortune. He may not be drawn on a jury, but is competent to give his testimony in a case at law and should he himself be on trial for a criminal offense he may request the presence of the nearest United States Consul. He may marry in Germany and as soon as the marriage takes place his wife must be assumed to have lost her German allegiance and to have transferred it to the United States, but he must conform in the marriage preliminaries to the requirements of the local German law.

In case of doubt as to his proper conduct in any particular matter, a doubt called forth by reason of his American citizenship, he has the right and privilege at any time of applying to a Consulate of the United States or to the Embassy for advice which the proper official must give him.

In short, the German-American in Germany, with the exceptions noted, stands upon exactly

the same footing as the native born citizen of the country which has conferred upon him the proud possession of American citizenship.

CHAPTER IX.

PROPER PROCEDURE OF A CONSUL WHOSE AID OR PROTECTION IS DEMANDED BY A GERMAN- AMERICAN IN GERMANY.

- When Consul may intervene, 48.
- No advice to evade the law, 49.
- When proceedings have begun, 50.
- No aid to wilful offenders, 51.
- No financial aid, 52.

When Consul May Intervene.

48. Should the aid, protection or advice of a Consul be requested by a German-American it should be given by him at once, a duty of this kind taking precedence over any other official work he may have in hand. The Consul, however, may only intervene on behalf of a fellow citizen after he has thoroughly satisfied himself that the latter is really a citizen of the United States and thereby entitled to his services. To this end, he must demand the passport of the applicant and in case that cannot be produced then either his original citizenship papers or a certified copy of them. Then, too, since a passport may have been stolen, the Consul may also in case he

doubts the identity of the applicant, demand identification through personal correspondence, through some person known to him or by any means which will serve to resolve all doubts. Should such means of identification entirely fail then the passport must be accepted as *prima facie* evidence of citizenship, though so long as the smallest doubt remains as to the passport being rightfully in the possession of the applicant, the Consul must exercise the greatest possible foresight. Having satisfied himself that the applicant is really a naturalized citizen of the United States, it goes without saying that he must consider him precisely as he would a native born citizen.

No Advice to Evade the Law.

49. Should only his advice be asked the Consul should give it freely but with the limitation that it should never include advice looking toward the transgression or evasion of the German law. This may seem a self-evident proposition. As a matter of fact it is an error into which a Consul might easily fall. For example: A German-American guilty of an infraction of the military or other law before his emigration returns to Germany and learns that the military authorities are seeking him. He goes to the nearest Consul

for advice and from him learns that his offense is one from the penalty for which his American citizenship is powerless to protect him. It may be remarked that his only safety is getting over the frontier of Germany into the neighboring country before the German authorities can arrest him. But the advice to this effect or assistance in getting over the border the Consul may not officially give him. Should he do so, he would render himself guilty of an infraction of Germany's law through aiding in the escape of an offender against German law. While for his action he could not be proceeded against in the court, his exequatur could be revoked and the German Government could, and probably would, request the Government of the United States to recall him. The Consul, must, accordingly, content himself with setting before the applicant the bare facts. He may point out to him whether his offense is one punishable by the German law or whether it is one against whose punishment he may protest. He may point out to him, without advising him one way or the other, what the probable penalty will be, should he be arrested, in case the offense is one admitting of no doubt. Should the applicant draw the inference that his only safety lies in flight and carry out the inference, that is his own affair and does not concern the Consul who

cannot on that account be justly accused of being an accessory.

When Proceedings Have Begun.

50. Should the offense be one from the consequence of which the possession of American citizenship protects the applicant then, until action is taken against him, the Consul can not actively intervene; though in this case should it seem to him best to advise his fellow citizen to leave the country he could not be held accountable for having given such advice. Should proceedings have been begun already against the applicant, then the Consul should report the facts without delay to the Embassy, enclosing the passport or citizenship papers of the accused and setting forth with the utmost exactness the situation of affairs. In the meanwhile he should satisfy himself that the accused, if imprisoned, is receiving proper treatment and if already brought before the court should see to it that he is properly defended. His further procedure in the matter will be determined by the Embassy. Should the accused be brought before the court for judgment before there is time to send a written communication to the Embassy and receive a reply, then the Consul should enter a protest against immediate judgment, should request postponement of further

action in the matter until he can communicate with the Embassy and should wire a summary of the case to the Embassy at once, following it with a written exposition of the facts. Should the accused have been judged and imprisoned already when the matter is brought to the Consul's attention then he must without delay communicate the facts to the Embassy. At the same time communications are sent to the Embassy duplicates of them should be sent by mail to the State Department through the Consul General under whom the Consul is placed.

Only in cases of the utmost emergency is the Consul of his own initiative justified in making a protest or taking any steps other than those directed toward securing for the accused proper treatment and a fair hearing under German law. While such emergencies are conceivable they are not likely to occur. It should also be borne in mind that there is no allowance to Consular officers of moneys to pay counsel for representing persons accused before the German law and that while a Consul may secure such counsel for a person accused the latter must defray all expense himself unless the Embassy or the Department of State instructs to the contrary.

No Aid to Wilful Offenders.

51. To persons wilfully guilty of infractions of the law (vid. Consular Regulations Sect. 432) the good offices of the Consul may not be extended. "It is the duty, however, of the Consul to endeavor on all occasions to maintain and promote all their (citizens abroad) rightful interests, and to protect them in all privileges that are provided for by treaty or are conceded by usage. If the representations are made to local authorities and fail to secure the proper redress, the case should be reported to the Consul General, if there be one, or to the diplomatic representative, if there be no Consul General, and to the Department of State."

No Financial Aid.

52. Financial aid may only be extended by a Consul to an applicant who is a citizen, at his own cost, unless the latter should actually be a sailor serving under the flag of the United States, in which case the necessary outlays must be reported to the Department of State upon forms provided for that purpose and will be repaid in the same manner as other allowed expenses but there is no fund for the assistance abroad of American citizens in distress when such citizens are not actually seamen. The Consular Regulations, a copy of which should be found in every Consulate,

prescribe the methods of relief and when it may be extended and should in these and in all other cases be carefully studied by every Consular officer.

CHAPTER X.

SUMMARY.

- Why detail is omitted, 53.
- Essential facts furnished, 53a.
- Invidious comparisons, 53b.
- Immediate intervention, 53c.
- Object of the book, 53d.

Why Detail is Omitted.

53. In the preceding pages the effort has been made to set forth the liability, non-liability, rights, privileges and duties of German-Americans returning to Germany, in as concise a manner as possible. Much detail has been omitted and conciseness even at the expense of perhaps desirable explanation, has been aimed at in order that the German-American returning to Germany may have set before him in as compact a form as possible the situation which will confront him upon his return to his native country.

Essential Facts.

53a. It has also been thought desirable not to encumber with details the facts set forth for the reason that, primarily, the intention is to furnish a

convenient digest and exposition of principles for the use of United States Consuls, who, while they may find in the preceding pages the essential facts required by them, may still be expected to be in a position to have access to the necessary sources of information should they desire to go more deeply into the matters set forth. In summarizing the conclusions reached it may first be observed that a German-American intending to return to Germany for a visit should first inform himself as to whether he is so situated as to run counter to German law after his return. Should he have been guilty of some trivial transgression such as emigration without permission, he need have but little fear. Should he, however, have been guilty of desertion it would be much better for him to remain away from the country of his birth. It has also been made evident that he should not make the journey without providing himself with a passport issued by the State Department, but that in classes of offenses such as desertion, committed prior to his obtaining citizenship, the fact of such citizenship, of which the passport is *prima facie* evidence, does not protect him.

Invidious Comparisons.

53b. Further, the German-American return-

ing to Germany should at all times have in mind the serious consequences likely to arise through ill-judged, untimely or invidious comparisons between German and American institutions. He should also remember that it is the duty of his adopted country's representatives in Germany to afford him without delay all proper protection and therefore in case of need in Germany apply at once to the nearest United States Consul for advice or assistance.

Immediate Intervention.

53c. On the other hand, it has been set forth that a Consul of the United States in Germany has no higher duty than that of offering at once, when his intervention is justified, all possible aid and protection to his naturalized fellow citizen who may call upon him for the exercise of his good offices. He confers no favor by extending his services in such cases. It is to him a paramount duty, but it is no less his duty to avoid extending aid in cases where it is not justified, or where by so doing his action would conflict with treaty provisions or with international comity. He should bear in mind that urgent as his duty is to afford his fellow citizens protection it is no less his duty to be absolutely certain that the applicant for his services is wholly worthy and justified in

demanding them. Never a year passes without many cases arising in Germany of German-Americans finding themselves in exceedingly disagreeable positions through former transgressions of the German military law; cases which at times cause great anxiety and trouble to the representatives of the United States in the German Empire, and in many of which they are powerless to aid.

Object of the Book.

53d. If then, this little volume should result, through making clear in a concise form to the former their duties and rights and to the latter the privileges and limitations of their power and should aid in some degree in removing the difficulties and possibly annoying consequences involved in a return to Germany of German-American citizens, the object involved in writing it will have been accomplished.

CHAPTER XI.

THE NATURALIZATION TREATIES.

- Treaty with North German Union, 54.
- States comprised in North German Union, 54a.
- Treaty with Baden, 54b.
- Treaty with Bavaria, 54c.
- Treaty with Hesse, 54d.
- Treaty with Würtemberg, 54e.

With North German Union.

54. It may be of interest to him who desires to pursue further the study of the questions set forth in the preceding pages to have at hand the verbatim treaties between the United States and the several German States regarding naturalization, for, be it observed, there is no general treaty on the subject between the German Empire as a whole and the United States. To the German-American it is also of interest to know under which treaty his native State comes. For this reason the list of the various States, together with the treaties to which reference may be made in consideration of the cases of German-Americans who may have been offenders against the German military law is given below:

States Comprised in North German Union.

54a.

| | |
|--------------------------|---------------------------------|
| Anhalt | Treaty with North German Union. |
| Alsace Lorraine | No treaty exists. |
| Baden | Special treaty. (See below.) |
| Bavaria | |
| Bremen | |
| Brunswick | Treaty with North German Union. |
| Hesse (North). | Special treaty. (See below.) |
| Hesse (South). | |
| Hamburg | |
| Lippe | |
| Lübeck | |
| Mecklenburg Schwerin | |
| Mecklenburg Strelitz | |
| Oldenburg | |
| Prussia | |
| Reuss ältere Linie | |
| Reuss jüngere Linie | |
| Saxony | Treaty with North German Union. |
| Saxon Altenburg | |
| Saxon Coburg Gotha | |
| Saxon Meiningen | |
| Saxon Weimar | |
| Schaumburg Lippe | |
| Schwarzburg Sonderhausen | |
| Schwarzburg Rudolstadt | |
| Waldeck | |
| Württemberg | Special treaty. |

The treaty with the North German Union, comprising as will be seen above, most of the States of Germany is as follows:

Article 1. Citizens of the North German Confederation who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years shall be held by the North German Confederation to be American citizens and shall be treated as such.

Reciprocally citizens of the United States who become naturalized citizens of the North German Confederation and shall have resided uninterruptedly within North Germany five years shall be held by the United States to be North German citizens and shall be treated as such. The declaration of the intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

Article 2. A naturalized citizen of the one party on return to the territory of the other party remains liable to trial and punishment for an action punishable by the law of his original country and committed before his emigration; saving always the limitations established by the laws of his original country.

Article 3. The convention for the mutual delivery of criminal fugitives from justice in certain

cases, concluded between the United States on the one part and Prussia and other States of Germany on the other part, the 16th of June, 1852, is hereby extended to all the States of the North German Confederation.

Article 4. If a German, naturalized in America renews his residence in North Germany, without the intent to return to America, he shall be held to have renounced his naturalization in the United States. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

The Treaty with Baden.

54b. Article 1. Citizens of the Grand Duchy of Baden who have resided uninterruptedly within the United States of America five years and before, during, or after that time, have become or shall become naturalized citizens of the United States, shall be held by Baden to be American citizens, and shall be treated as such. The declaration of intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

Article 2. A naturalized citizen of the one party on return to the territory of the other party, remains liable to trial and punishment for an ac-

tion punishable by the laws of his original country and committed before his emigration, saving always the limitation established by the laws of his original country, or any other remission of liability to punishment. In particular a former Badener who, under the first article, is to be held an American citizen, is liable to trial and punishment according to the laws of Baden for non-fulfillment of military duty:—

1. If he has emigrated after he has been enrolled as a recruit for service in the standing army.
2. If he has emigrated while in service under the flag, or during leave of absence for a limited time.
3. If, having a leave of absence for an unlimited time or belonging to the reserve or to the militia, he has emigrated after having received a call into service, or after a public proclamation requiring his appearance, or after war has broken out.

On the other hand a former Badener, naturalized in the United States, who, by or after his emigration has transgressed or shall transgress the legal provisions of military duty by any acts or omission other than those above enumerated in the clauses numbered 1-3, can on his return to his original country neither be held, subsequently,

to military service nor remain liable to trial and punishment for the nonfulfillment of his military duty. Moreover an attachment on the property of an emigrant for nonfulfillment of his military duty, except in the cases designated in the clauses 1-3, shall be removed so soon as he shall prove his naturalization in the United States according to the first article.

Article 3. The convention for the mutual delivery of criminals, fugitives from justice, concluded between the Grand Duchy of Baden on the one part and the United States on the other part, the 30th day of January, 1857, remains in force without change.

Article 4. The emigrant from the one State who, according to the first article is to be held as a citizen of the other State, shall not on his return to his original country be constrained to resume his former citizenship. Yet, if he shall on his own accord re-acquire it and renounce the citizenship by naturalization, such a renunciation is allowed and no fixed period of residence shall be required for the recognition of the recovery of citizenship in his original country.

The Treaty with Bavaria.

54c. Article 1. Citizens of Bavaria who have become or shall become naturalized citizens of the

United States, and shall have resided uninterruptedly within the United States, for five years, shall be held by Bavaria to be American citizens and shall be treated as such.

The declaration of intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

Article 2. A naturalized citizen of the one party on return to the territory of the other remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitations established by the laws of his original country, or any other remission of liability to punishment.

Article 3. The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States on the one part and Bavaria on the other part, the 12th day of September, 1853, remains in force without change.

Article 4. If a Bavarian, naturalized in America, renews his residence in Bavaria without the intent to return to America, he shall be held to have renounced his naturalization in the United States. The intent not to return may be held to exist when the person naturalized in the one

country resides more than two years in the other country.

Protocol relating to the first article of the treaty:

Inasmuch as the copulative "and" is made use of it follows of course that not the naturalization alone, but an additional five years' uninterrupted residence is required, before a person can be regarded as coming within the treaty; but it is by no means requisite that the five years' residence should take place after the naturalization. It is hereby further understood that, if a Bavarian has been discharged from his Bavarian allegiance or an American from his citizenship and then acquires naturalization in the other country in a rightful and perfectly valid manner, then an additional five years' residence shall no longer be required, but a person so naturalized shall upon the moment of his naturalization be held and treated as a Bavarian and reciprocally as an American citizen.

2. The words "resided uninterruptedly" are obviously to be understood as not of a continuous bodily presence, but in the legal sense, and therefore a transient absence, a journey or the like, by no means interrupts the period of five years contemplated by the first article.

Relating to the second article of the Treaty:

1. It is expressly agreed that a person, who under the first article, is to be held as an adopted citizen of the other State, on his return to his original country cannot be punished for the act of emigration itself, even though at a latter day he should have lost his adopted citizenship.

Relating to the article 4 of the treaty:—

1. It is agreed on both sides that the regulative powers granted to the two governments respectively by their laws for protection against resident aliens, whose residence endangers peace and order in the land are not affected by the treaty. In particular the regulations contained in the second clause of the tenth article of the Bavarian military law of the 30th of January, 1868, according to which Bavarians, emigrating from Bavaria before the fulfillment of their military duty cannot be admitted to a permanent residence in the land till they have become thirty-two years old is not affected by the treaty. But yet it is established and agreed that by the expression "permanent residence" used in the said article, the above described emigrants are not forbidden to undertake a journey to Bavaria for a short period of time and for definite purposes, and the royal Bavarian Government moreover cheerfully declares itself ready in all cases in which the emi-

gration has plainly taken place in good faith, to construe the law mildly.

2. It is hereby agreed that when a Bavarian, naturalized in America and reciprocally an American, naturalized in Bavaria, takes up his abode once more in his original country without the intention of returning to the country of his adoption, he does by no means thereby recover his former citizenship; on the contrary in so far as it relates to Bavaria it depends upon the King whether he will or will not grant the Bavarian citizenship anew.

The fourth article shall accordingly only have the meaning that the adopted country of the emigrant cannot prevent him from acquiring once more his former citizenship; but not that the State to which the emigrant originally belong shall be bound to restore him at once to his original relation to it.

On the contrary the citizen naturalized abroad must first make application to be received again in his original country in the manner prescribed by its laws and regulations, and must require citizenship anew exactly like any other alien. Yet it is left to his own free choice whether he will adopt that course or will preserve the citizenship of the country of his adoption.

Treaty with Hesse.

54d. The treaty with Hesse (northern part) is as follows:

Article 1. Citizens of the parts of the Grand Duchy of Hesse not included in the North German Confederation who have become or shall become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by the Grand Ducal Hessian Government to be American citizens and shall be treated as such.

Reciprocally citizens of the United States of America who have become or shall become citizens of the above prescribed parts of the Grand Duchy of Hesse and shall have resided uninterruptedly therein five years, shall be held by the United States to be citizens of the Grand Duchy of Hesse and shall be treated as such.

The declaration of the intention to become a citizen of the one or the other country, has not for either party the effect of naturalization.

Article 2. A naturalized citizen of the one party on his return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country, and committed before his emigration, saving always the limitations established by the laws of his original country.

Article 3. The convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States of America and the Grand Duchy of Hesse on the 16th of June, 1852, remains in force without change.

Article 4. If a Hessian, naturalized in America, but originally a citizen of the parts of the Grand Duchy not included in the North German Union, renews his residence in those parts without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

Treaty with Wurttemberg.

54e. Article 1. Citizens of Würtemberg who have become or shall become naturalized citizens of the United States and shall have resided uninterruptedly in the United States five years shall be held by Würtemberg to be American citizens and shall be treated as such.

The declaration of the intention to become a citizen of the one or the other country has not for either party the effect of naturalization.

Article 2. A naturalized citizen of the one party on his return to the territory of the other party remains liable to trial and punishment for an action punishable by the laws of his original country and committed before his emigration, saving always the limitation established by the laws of his original country or any other remission of liability to punishment.

Article 3. The Convention for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between Württemberg and the United States the 16th of June, 1852, remains in force without change.

Article 4. If a Württemberger, naturalized in America, renews his residence in Württemberg without the intent to return to America, he shall be held to have renounced his naturalization in the United States.

The intent not to return may be held to exist when the person naturalized in the one country, resides more than two years in the other country.

PROTOCOL EXPLANATORY OF THE CONVENTION.

Relation to the first article of the Treaty:

It is, of course, understood that not the naturalization alone, but a five years' residence is also required, before a person can be regarded as coming within the treaty; but it is by no means re-

1. After their enrollment in the active army and before their discharge from the same or
2. After they have been called into service with the class of their age or on the placing the military force on a war footing or who have been present at a muster and have been designated as a part of the contingent to serve with the colors.

Relating to the fourth article of the Treaty:

It is agreed that the fourth article shall not receive the interpretation that the naturalized citizen of the one State who returns to the other State, his original country, and there takes up his residence, does by that act alone recover his former citizenship, nor can it be assumed that the former State to which the emigrant originally belonged is bound to restore him at once to his original relation. On the contrary it is only intended to be declared: that the emigrant so returning is authorized to acquire the citizenship of his former country, in the same manner as other aliens in conformity with the laws and regulations which are there established, yet it is left to his own free choice, whether he shall adopt that course or will preserve the citizenship of the country of his adoption. With regard to this choice, after a two years' residence in his original country he is bound, if so requested by the proper

authorities, to make a distinct declaration, upon which these authorities can come to a decision with regard to his being again received into citizenship or his further residence in the country in the manner prescribed by law.

CHAPTER XII.

CONCLUSION.

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Appreciation of American citizenship, 56.

Acts of Amnesty.

55. A word of final explanation may be added: There have been issued from time to time by the German Emperors so called Acts of Amnesty (Gnaden Erlasse) under which persons having committed offenses against the military law may find themselves freed from disagreeable consequences. The general character of these Acts of Amnesty and their complicated nature forbid their publication in a volume intended for general reading and therefore untechnical in its character. It is also the case that in so far as they concern German-Americans they extend amnesty for acts against the consequence of which the possession of American citizenship, as set forth in the preceding pages, is also a protection.

However, an inquiring German-American who, having read the foregoing pages and having studied the treaties quoted, recognizes himself as

having been guilty under the German military law of some offense, might with advantage, before returning to Germany, inquire whether his case comes under any one of the acts of amnesty. In this case he should address the Department of State, setting forth the facts clearly and ask for the assistance of the United States Embassy in Germany in the matter, or, should he be already in Germany, either apply directly to the Embassy or through the nearest Consulate. In any one of these cases it cannot be too strongly insisted upon that he must be prepared to submit indubitable proofs of his American citizenship.

Appreciation of American Citizenship.

56. In conclusion it should be reiterated that a German-American returning to his native State may best show his appreciation of the splendid gift of American citizenship not alone by providing himself with every possible safeguard against coming into conflict with German military or civil law, but by an avoidance of any invidious criticism and comparison, which might not only involve disagreeable personal consequences but which would bring discredit upon American citizenship and upon his adopted country which counts the Americans of German birth as among its best citizens.

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